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May 7, 2024

Via Email and ECF

Honorable Freda L. Wolfson, U.S.D.J.
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, NJ 07068

**Re: Reply In Support of Motion to Enforce Order Regarding
Production of Documents Related to SaveOnSP's Adapt Program
Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC,
Civil Action No. 22-2632 (JKS) (CLW)**

Dear Judge Wolfson:

On behalf of JJHCS, we write in further support of JJHCS's April 29, 2024 motion to enforce Your Honor's order regarding the production of documents related to SaveOnSP's Adapt program. SaveOnSP's brief in opposition to JJHCS's motion is indicative of the sort of unproductive gamesmanship that has characterized SaveOnSP's approach to this document request, and shows why JJHCS's motion should be granted.

First, as JJHCS explained in its Motion, Your Honor's order cannot be clearer: JJHCS's Request Nos. 99, 102, and 103 "seek to search for documents [regarding] . . . the so-called Adapt program," and SaveOnSP is directed to produce the "relevant, non-privileged documents" covered

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by those Requests. Apr. 10, 2024 Order at 6. SaveOnSP suggests that it need not run a search term specifically tailored to the Adapt program because it has already run several search terms that *do not* reference the Adapt program. Opp. at 4. This is not logical. The search term best suited to identify documents related to the Adapt program, as Your Honor’s Order requires, is of course one that includes the word “Adapt.” The term that SaveOnSP refuses to run does, and the prior search terms that SaveOnSP references do not.

Second, SaveOnSP implies that JJHCS’s motion to compel did not expressly seek to compel SaveOnSP to run searches including the word “Adapt.” That is untrue. As JJHCS’s opening brief explained, JJHCS sought an order compelling SaveOnSP to run *both* the specific search strings it proposed *and* searches including the “Adapt” nomenclature. Mar. 6, 2024 Mot. to Compel, at 4 n.4. Indeed, the only reason JJHCS’s original search string proposals did not mention “Adapt” is because JJHCS learned of that name belatedly. SaveOnSP never disclosed it during the meet and confer process surrounding the original search term proposal, and JJHCS only learned of the “Adapt” name from a document that SaveOnSP did not produce until weeks after JJHCS made the original search term proposal. And when Your Honor granted JJHCS’s motion to compel, Your Honor expressly called out the “Adapt” name. Thus, there is no truth to SaveOnSP’s contention that its obligations under the Order are limited to producing documents responsive to JJHCS’s original search term proposal. Opp. at 5.

Finally, SaveOnSP makes several arguments regarding the purported overbreadth of JJHCS’s proposed Adapt search and the undue burden associated with running it. But the “processing error” that SaveOnSP has now disclosed does not have any effect on the number of documents presented for review by the Adapt search term at issue here. Nor did SaveOnSP present any burden issues

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during the conferral process. Instead, SaveOnSP repeatedly rebuffed JJHCS's requests to meet and confer regarding the Adapt search term. *See* Mot. Ex. 2 at 5–7. It repeatedly ignored JJHCS's requests that SaveOnSP provide its position on the Adapt search term. *See* Mot. Ex. 2 at 4. And when, after weeks of delay, it finally explained its refusal to run the Adapt search term, it failed to raise the burden and overbreadth arguments that it now places at the center of its Opposition. *See* Mot. Ex. 2 at 3. Nonetheless, if SaveOnSP confirms that it never used the word “Adapt” to refer to a SaveOnSP offering before January 1, 2022, JJHCS has no objection to an order compelling SaveOnSP to produce documents elicited by the proposed Adapt search term from January 1, 2022 or later.

Respectfully submitted,

/s/ Jeffrey J. Greenbaum

JEFFREY J. GREENBAUM

cc: All counsel of record for SaveOnSP